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UNCLAS SECTION 01 OF 04 STATE 122215

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SUBJECT: CIVAIR INDIA: REQUEST TO SEEK CLARIFICATION FROM THE  
MINISTRY OF CIVIL AVIATION ON SECURITY SCREENINGS

11. This is an action request. See paras. 12-14.

12. (SBU) Summary: Due to recent statements made by Indian Bureau of Civil Aviation Security (BCAS) officials in correspondence with a U.S. air carrier, as well as comments made by a BCAS official in an August 2009 meeting, the Transportation Security Administration (TSA) of the U.S. Department of Homeland Security would like to verify that Indian air carriers are conducting security screening as required by TSA for non-stop flights to the United States. TSA requests that Post meet with senior-level officials at the Ministry of Civil Aviation (MOCA) to seek clarification about procedures for security screening of flights to the United States, and to request approval from the Government of India (GOI) for TSA to conduct inspections of host country air carrier non-stop flights operating between India and the United States. MOCA should be informed that if TSA is unable to confirm the adequacy of security screening for these flights, the USG may be compelled to request consultations under the U.S.-India Air Transport Agreement of April 14, 2005 (referred to as the "Agreement"), and, if those consultations are not successful at resolving the issue, to contemplate additional measures to ensure the security of passengers traveling between the United States and India.

Given the sensitivity of this issue, the Department urges Post to ensure that appropriate officials in the Ministry of External Affairs (MEA) also are informed. Post is also requested to obtain an update from GOI officials on the status of the Airport Technical Visit Memorandum of Understanding (MOU) proposed by TSA. End Summary.

Background

13. (SBU) In September 2007, TSA attempted to conduct inspections of host country air carriers that operate non-stop flights from India's New Delhi-Indira Gandhi International Airport (DEL) and Mumbai-Chhatrapati Shivaji International Airport (BOM) to the United States. However, the GOI refused to permit the inspection team to complete the inspections. Since that time, the GOI has continued to deny TSA requests to carry out Indian air carrier inspections at DEL and BOM.

14. (SBU) Although TSA could not perform complete airport assessments and air carrier inspections in 2007, TSA was able to determine that there were serious security inadequacies at DEL and BOM.

15. (SBU) In response to the extraordinary level of threat in India, coupled with weak (or undetermined) security measures being carried out at India's last point of departure (LPD) airports, on March 17, 2009, TSA issued a Security Directive (SD) to U.S. air carriers operating to and from India and an Emergency Amendment (EA) to host country carriers operating flights to the United States. The SD and EA contain additional security requirements that must be implemented by air carriers in order for flights to continue operating to the United States. It had been TSA's understanding, until recently, that all air carriers operating flights from India to the United States

were adhering to TSA's SD or EA, as appropriate.

¶6. (SBU) In late 2007, TSA began negotiations with the GOI for a non-binding Airport Technical Visit Memorandum of Understanding with the Bureau of Civil Aviation Security (BCAS MOU) that, among other things, would allow the United States and India to conduct reciprocal airport inspections. The BCAS MOU has not been completed, though it appeared during August 4-7, 2009 meetings in New Delhi between the TSA Representative to India and MOCA and BCAS officials that the MOU would be concluded in the near term.

¶7. (SBU) At a meeting on August 7 at BCAS Headquarters, a BCAS official told the TSA Representative to India that BCAS had directed host country air carriers to disregard U.S. regulations for operations to the United States. TSA confirmed, through discussions with Indian air carriers, that this instruction was in fact issued. However, the air carriers claim that they have been implementing TSA security procedures despite the BCAS instruction.

¶8. (SBU) On October 28, BCAS issued a Show Cause Notice to Continental Airlines (CO) challenging the screening of former President Kalam, as well as CO's performance of secondary screening measures (as required by the TSA SD issued to CO) not approved by BCAS. The Show Cause Notice raises the concern that the GOI may impose legal sanctions on U.S. carriers or their employees that implement TSA regulations for U.S.-bound flights and/or that the GOI may attempt to prevent CO and other U.S. air carriers from conducting

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secondary screening or any other additional security measure for direct flights to the United States.

¶9. (SBU) The Show Cause Notice, coupled with the August 7 BCAS official's statement (and confirmed by at least one host country air carrier, in writing), compels TSA to seek clarification about security screening procedures for flights to the United States, and to again request approval from the GOI to conduct inspections of host country air carrier non-stop flights operated between India and the United States.

#### TSA's Possible Courses of Action

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¶10. Under Article 7 (Security) of the Agreement, each Party has agreed to observe the security provisions required by the other Party for aircraft to entry into, departure from, or operation in the territory of the other Party. Article 7 further states that if one Party has reasonable grounds to believe that the other Party is not observing these provisions, and if consultations do not resolve the issue, then the first Party can withhold, revoke, limit, or impose conditions on the authority of the airlines of that other Party. Further, if required by an emergency, a Party may take interim action prior to the expiration of the period for consultations.

¶11. (SBU) TSA's security regulations are promulgated to protect the traveling public, the movement of commerce, and the security of U.S. airspace. Therefore, if TSA cannot verify that Indian air carriers are conducting necessary secondary screening on non-stop flights to the United States as required by U.S. regulations, the USG may be compelled to request consultations under the U.S.-India Air Transport Agreement and, if those consultations are not successful at resolving the issue, may have to consider: 1) posting public notices at U.S. international airports advising the public of TSA's inability to adequately assess security measures for flights from India to the United States; 2) suspending those non-stop flights; 3) requiring Indian air carriers to make intermediate stops at airports in a third country where more robust security procedures may be carried out rather than flying on a non-stop basis to the United States; and/or 4) requiring Indian air carriers to stop at a more secluded U.S. airport for full aircraft off-loading and re-screening before the flight may proceed to its final destination.

#### Action Request

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¶12. (U) TSA requests that Post use the talking points at para 15

with senior-level officials at MOCA and MEA to seek clarification about security screening procedures for flights to the United States, to request approval from the GOI to conduct inspections of host country air carrier non-stop flights operated between India and the United States, and to request approval from the GOI to conduct airport inspections at Indian airports serving as last points of departure to the United States. The talking points may also be left behind as a non-paper.

¶13. (U) Post should also inform GOI officials of the actions the USG may consider taking if TSA cannot verify the adequacy of security screening on flights to the United States as required by U.S. regulations.

¶14. (U) TSA additionally requests that Post inquire about the status of the BCAS MOU.

¶15. (SBU) Begin Talking Points:

-- It is critical that U.S. and Indian civil aviation security officials maintain a cooperative working relationship as our countries work to meet the difficult challenge of ensuring civil aviation security.

-- The United States and India share a commitment to the safety and security of international air transport, and the prevention of acts or threats against the security of aircraft, which jeopardize the safety of persons or property and undermine public confidence in the safety of civil aviation. This shared concern is reflected in the safety and security provisions of the U.S.-India Air Transport Agreement of 2005 (the Agreement).

-- Under Article 7 (Security) of the Agreement, each Party has agreed to observe the security provisions required by the other Party for aircraft to entry into, departure from, or operation in the territory of the other Party. Article 7 further states that if one Party has reasonable grounds to believe that the other Party is not observing these provisions, and if consultations do not resolve the issue, then

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the first Party can withhold, revoke, limit, or impose conditions on the authority of the airlines of that other Party. Further, if required by an emergency, a Party may take interim action prior to the expiration of the period for consultations.

-- The Transportation Security Administration (TSA) directly regulates air carriers, and requires each air carrier operating to the United States to carry out a TSA-approved security program. Additionally, each such air carrier may, via Emergency Amendments (EAs) and Security Directives (SDs), be required to implement certain security measures in addition to what is contained in its security program in order to address specific emergencies, threats, vulnerabilities or other security concerns.

-- Mandatory air carrier security programs, and supplemental EAs and SDs, are part of TSA's regulatory scheme, and therefore have the force and effect of regulations. It is the responsibility of the air carrier to ensure that the measures contained in an SD or EA are adequately implemented. SDs and EAs are issued to air carriers and not foreign governments, and TSA ordinarily does not expect that foreign governments would implement the measures contained in these documents.

-- If an air carrier is not in compliance with TSA requirements, it faces various TSA enforcement actions (administrative action, civil penalty, etc.). Where a country refuses to allow one of its air carriers to comply with TSA requirements, then the United States may invoke the consultations provision under the security article of an air transport agreement (Article 7 of the Agreement). Where consultations fail to result in a satisfactory resolution, the security article provides that the United States may refuse the air carrier entry to U.S. airspace or place other limitations on the air carrier's ability to continue operate to the United States.

-- During an August 7, 2009, meeting in New Delhi, a senior official of the Indian Bureau of Civil Aviation Security (BCAS) told the TSA

Representative for India that BCAS had directed host country air carriers to disregard U.S. regulations for their operations to the United States. Independently, TSA was able to corroborate this statement in discussions with at least one host country air carrier, in writing. However, the carriers claimed to be implementing security procedures required in TSA regulations despite the BCAS instruction.

-- On October 28, BCAS issued a Show Cause Notice to Continental Airlines (CO) challenging the April pre-flight screening of former President Kalam and the secondary screening CO conducts that is not approved by BCAS. This raises the concern that the Government of India (GOI) may seek to impose legal sanctions on U.S. carriers that follow TSA regulations and/or attempt to prevent CO, and other U.S. carriers, from conducting secondary screening for flights to the United States.

-- As part of its mandate to protect the traveling public and the safety and security of U.S. airspace, TSA seeks clarification about security screening procedures for flights to the United States, and renews its requests for approval from the GOI to conduct inspections of Indian air carrier non-stop flights operated between India and the United States, and to request approval from the GOI to conduct airport inspections at Indian Airports serving as last points of departure to the United States, specifically at New Delhi-Indira Gandhi International Airport and at Mumbai-Chhatrapati Shivaji International Airport.

-- Because of the grave security concerns, if TSA cannot verify the adequacy of security screening for flights to the United States, the USG may be compelled to request consultations under the Agreement and, if those consultations are not successful at resolving the issue, may consider the following actions: posting public notices at U.S. international airports advising the public of TSA's inability to adequately assess security measures for flights from India to the United States; suspending Indian carrier non-stop flights between India and the United States; requiring Indian carriers to make intermediate stops at airports where more robust security procedures may be carried out, rather than being permitted to continue flying non-stop to the United States; and/or requiring Indian carriers to stop at a more secluded U.S. airport for full aircraft off-loading and re-screening before the flight may proceed to its final destination.

-- TSA also seeks clarification on the status of BCAS consideration of the Airport Technical Visit Memorandum of Understanding (MOU) proposed by TSA. This MOU would not only allow reciprocal airport inspections, but also would more generally raise the level of cooperation between U.S. and Indian civil aviation security

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officials.

-- Given the serious security concerns faced by the United States, TSA has only exempted current Heads of State and Heads of Government from the screening process for such flights. TSA screening requirements apply universally to all airports serving as the last point of departure into the United States. However, TSA has established discrete and respectful screening protocols for non-exempt VIPs. With prior coordination, these individuals will be afforded all due courtesies as appropriate to their former or current positions.

End Talking Points.  
CLINTON